

# National Association of County Veterans Service Officers



**Private  
Evidence**

# Obtaining Evidence

- The general types of evidence we use in presenting claims to the VA are:
  - Medical Records
  - Service Records
  - Other documentary evidence
  - Expert witness statements (medical opinions)
  - Lay witness statements

# Obtaining Medical Records

- We should not rely on the VA to obtain medical records. Get them yourself.
- Requesting records from private hospitals/doctors is simple...
  - Send a written request to the doctor or institution holding the medical records.
  - Indicate why the records are being requested.

- Request that the records be provided free of charge
- Attach a signed release (21-4142)
- Remember “HIPPA” requirements



# Records of treatment at VA Medical Centers

- Send request to VAMC where veteran was treated using VA form 3288



# Obtaining Service Records

- Although VA is generally required to obtain service records - suggest you obtain a copy directly from the claimant or NPRC if possible.
  - Request personnel files and medical records using eVetRecs or an SF 180. Be specific on requests for treatment/surgery at clinics/hospitals.
  - Can also write to the national archives to obtain unit histories, after action reports, etc...

# Locating and obtaining other documentary evidence

- Internet
- Medical Journals
- Scientific Studies
- FOIA Requests

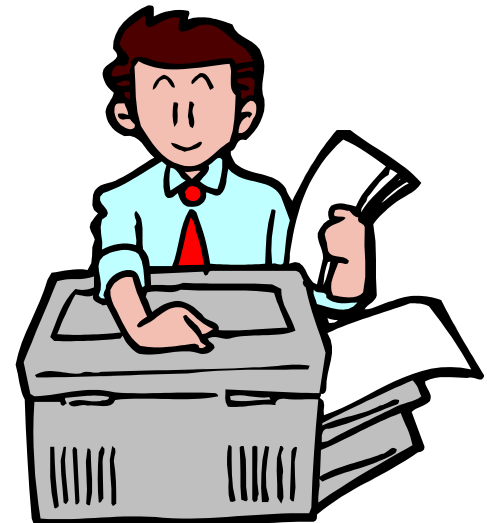


# FOIA Requests

- Applies to federal government but every state has a similar statute that applies to state and local governments.
- Allows you to obtain agency records.
- Must decide within 10 days whether to comply with request and inform requestor of decision and right to appeal.

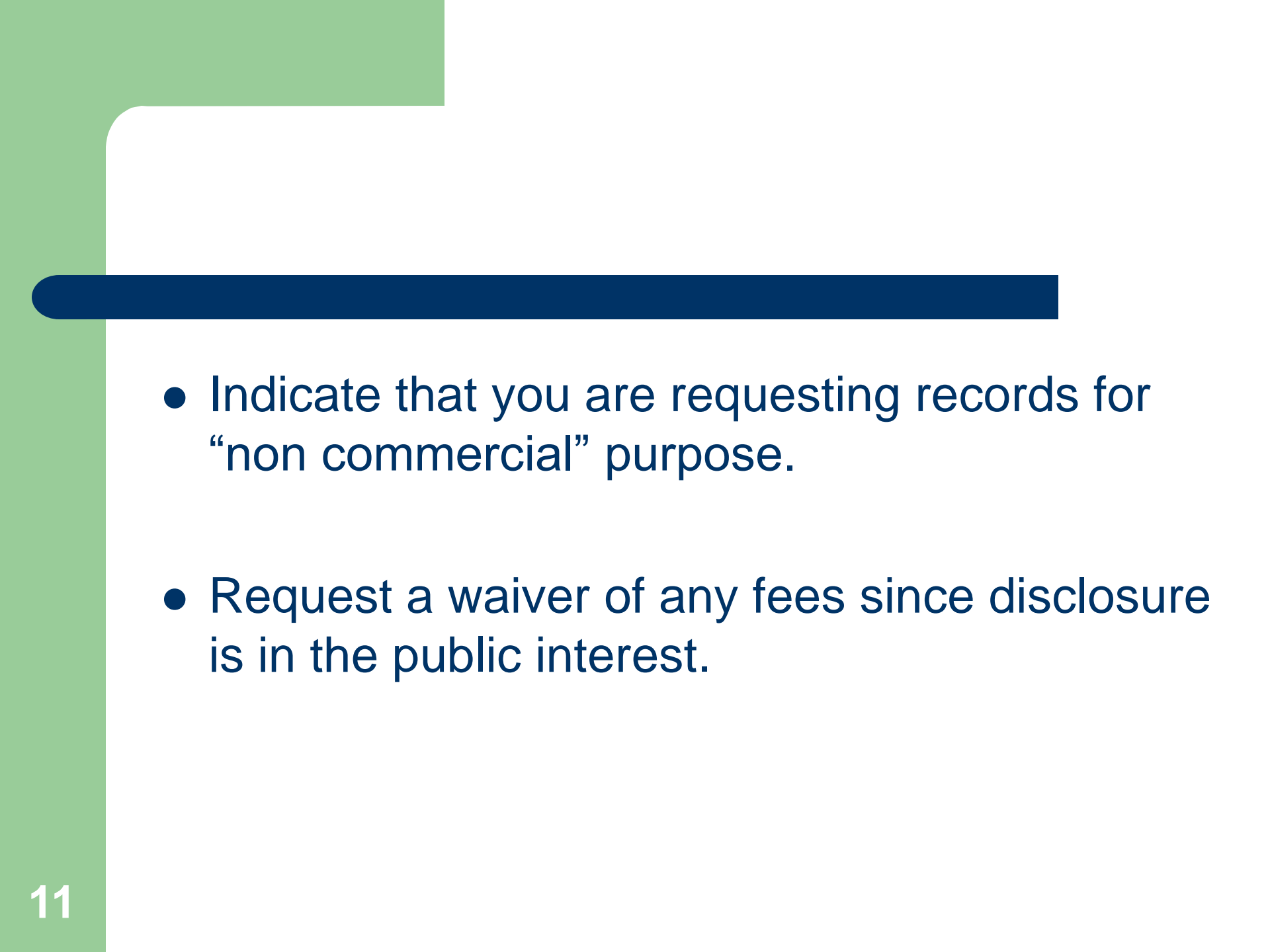


- Fees for searching and copying can be charged but are often waived if request is not “for commercial use”.



# Making a FOIA Request

- Get mailing address for FOIA office of agency.
- State “this is a request under the Freedom of Information Act, 5 U.S.C. Sec 552”.
- Request must “reasonably describe” the records you are seeking. Be as precise and accurate as possible.

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- Indicate that you are requesting records for “non commercial” purpose.
  - Request a waiver of any fees since disclosure is in the public interest.

# Requesting Medical Opinions

- Send letter to medical expert.
- Advise of purpose for request.
- Provide doctor with your theory of SC.
- Ask for his/her expert medical opinion.
- Ask to provide reasons and bases of opinion.

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- Request that opinion be provided free of charge.

(38 CFR 3.159(c) prohibits the VA from paying for records)

- Attach a release.

# Lay Witness Statements

- Family/Friends/Comrades cannot provide medical opinions (unless they have medical expertise).
- Can provide statements regarding things they personally observed.
- Eye witness account of visible symptoms.

- Should be notarized indicating statement is true to the best of their knowledge.

(per the VA's "Duty to Assist" letter)

# Re-examine evidence for other possible claims

- As you gather evidence you may identify additional claims which may be even stronger than those initially identified. Keep an open mind and research/investigate as necessary.
- Amend initial claim or submit additional claims as necessary.



# Submit relevant evidence which is favorable to claim

- Relevant evidence is defined by Blacks Law Dictionary as “evidence having a tendency to make the existence of any fact that is of consequence to the claim more or less probable”.

# Written Advocacy

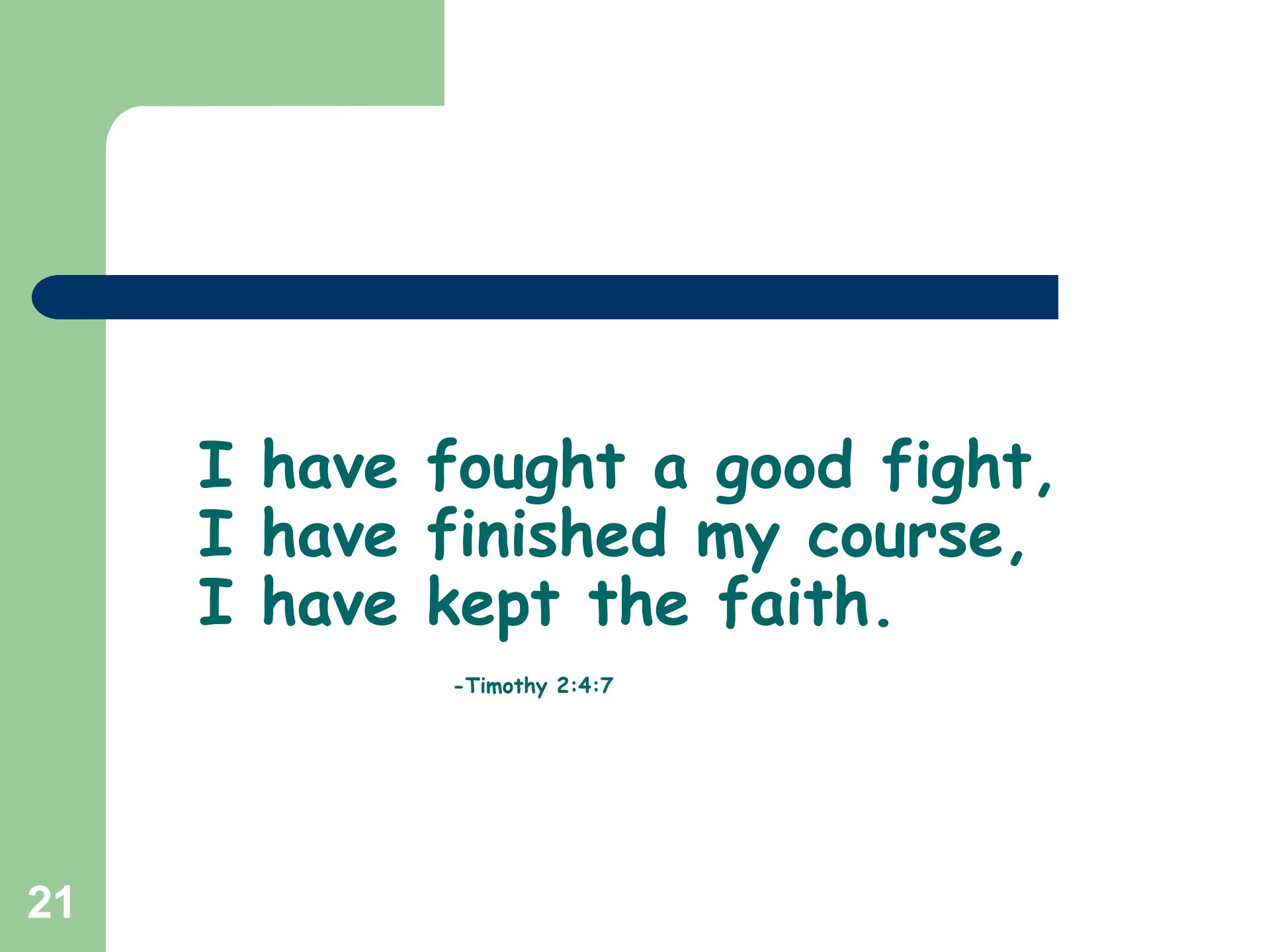
- Understand the law and what you need to prove.
- Cite CAVC/Federal Circuit cases, statutes, rules, regulations and/or precedent opinions.
- Use key phrases in statements and arguments.

# Submit statement/brief with claim

- Send 4138 or brief with claim explaining basis of claim and evidence submitted.
- Include statement to the effect “please consider this claim for all benefits which can be reasonably inferred from the facts or circumstances of this claim although I may not have specifically identified the particular benefit”.

# Format for a simple brief

- Issues presented
- Statement of facts
- Argument
- Conclusion



I have fought a good fight,  
I have finished my course,  
I have kept the faith.

-Timothy 2:4:7